

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CASE NO. 04-35278 DDO**

Brenda M. James  
Brenda M. Eke  
SSN XXX-XX-3618

**CHAPTER 13 CASE**

Debtor.

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**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**

TO: Debtor and other entities specified in Local Rule 3015-3.

1. Countrywide Home Loans, Inc. (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on November 9, 2004, before the Honorable Dennis D. O'Brien in Courtroom 228A at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on November 8, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than November 6, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed September 9, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$77,960.00, as evidenced by that certain Promissory Note dated December 31, 1996, together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated December 31, 1996, executed by Brenda M. Eke, a single person, recorded January 30, 1997, as Document No. 1402906, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in her pre-petition monthly mortgage payments to Secured Creditor for the months of May, 2004 through September, 2004, in the total amount of \$4,884.04, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 73 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. The value of the property as scheduled by Debtor is \$115,100.00 subject to Secured Creditor's mortgage in excess of \$74,552.62. The property is also subject to a lien in favor of Timbershore Homeowners Association in excess of \$5,748.00 as scheduled by Debtor.

11 The plan, as proposed, is not made in good faith by Debtor.

. . .

12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 12th day of October, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, Minnesota 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

1402906

RR1662 (A)

COPY DEL'D

OFFICE OF THE COUNTY RECORDER  
DAKOTA COUNTY, MINNESOTA  
CERTIFIED THAT THE INSTRUMENT  
WAS RECORDED IN THIS OFFICE ON AND AT

JAN 30 12 49 PM '97

1402906

DOC. NO. 1402906  
JAMES N. DOLAN, COUNTY RECORDER  
BY BY Deputy

FEE 17.00 SURCHARGE 4.50

CASH ☐ CHECK ☒ ESCROW ☐WELL ☐ CHARGE ☐

CHARGE TO:

O/R

DO NOT REMOVE

DATE 01/16/1997  
TIME 10:11:00  
BY JAMES N. DOLAN  
COUNTY RECORDER  
RECEIPT NUMBER 27067  
175.40  
3.00

RAPID RECORDINGS

92

1402906

WHEN RECORDED MAIL TO:

MSN SV-79 / DOCUMENT CONTROL DEPT.  
P.O. BOX 10266  
VAN NUYS, CALIFORNIA 91410-0266

LOAN #: 5212059

ESCROW/CLOSING #: 000703

SPACE ABOVE FOR RECORDERS USE

State of Minnesota

## MORTGAGE

FHA Case No.

MN2717548642729

THIS MORTGAGE ("Security Instrument") is given on December 31, 1996. The Mortgagor is  
BRENDA M EKE, A SINGLE PERSON

("Borrower"). This Security Instrument is given to  
COUNTRYWIDE HOME LOANS, INC.

which is organized and existing under the laws of NEW YORK  
155 NORTH LAKE AVENUE, PASADENA, CA 91109

, and whose address is

("Lender"). Borrower owes Lender the principal sum of  
SEVENTY SEVEN THOUSAND NINE HUNDRED SIXTY and 00/100  
Dollars (U.S. \$ 77,960.00).

This debt is evidenced by Borrower's note dated the same date as this  
Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and  
payable on January 1, 2027 and for interest at the yearly rate of 6.750  
percent. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest,  
and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced  
under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants

Page 1 of 4

FHA Minnesota Mortgage - 4/96

4R(MN) (3604)

CHL (04/96)

VMP MORTGAGE FORMS - (800) 521-7291

Initials: BE

\* 2 3 9 9 1 \*



\* 0 0 5 2 1 2 0 5 9 0 0 0 0 0 D U 2 A 0 \*

RECEIVED

JAN 15 1997

EXHIBIT A

CASE #: MN2717548642729

LOAN #: 5212059

and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in DAKOTA Country, Minnesota:

SEE ATTACHED LEGAL DESCRIPTION

which has the address of  
1165 TIMBERSHORE LANE

EAGAN

[City]

[Street]  
Minnesota 55123-

[Zip Code]

("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

#### UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

Lot 3, Block 1, Timbershore Fourth Addition, subject to and together with the Declaration of Covenants, Restrictions and Easements recorded as document no. 401215 as supplemented by Document nos. 405746, 408071, 421309; and the easements created by Document nos. 403215, 403527, 405747, 408070, 421308, 644731 and 805458, according to the plat thereof on file or of record in the office of the County Recorder, Dakota County, Minnesota.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Brenda M. James  
Brenda M. Eke  
SSN XXX-XX-3618

**CASE NO. 04-35278 DDO**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 12, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Brenda M. James  
1165 Timbershore Lane  
Eagan, MN 55123

Jasmine Z. Keller  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402

Edward P. Russell  
520 Snelling Ave N  
St. Paul, MN 55104

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 12th day of October, 2004.

/s/ Diana Waletzko  
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

\_\_\_\_\_  
In Re:

**ORDER DENYING CONFIRMATION  
OF PLAN**

Brenda M. James  
Brenda M. Eke  
SSN XXX-XX-3618

Debtor.

**CASE NO. 04-35278 DDO**

\_\_\_\_\_  
This Chapter 13 Case came on before the Court on November 9, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed September 9, 2004, is denied.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court